

VIRGINIA EDWARDS

IBLA 80-419

Decided May 19, 1980

Appeal from decision of the Oregon State Office declaring mining claims abandoned and void.  
3833 (OR).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally --  
Federal Land Policy and Management Act of 1976: Recordation of  
Mining Claims and Abandonment -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode mining claim, located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

2. Federal Land Policy and Management Act of 1976: Recordation of  
Affidavit of Assessment Work or Notice Intent to Hold Mining Claim  
-- Federal Land Policy and Management Act of 1976: Recordation of  
Mining Claims and Abandonment -- Mining Claims: Recordation --  
Federal Land Policy and Management Act of 1976: Rules and  
Regulations

43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied

by the stated fee, or until it is paid. Therefore, where notices of location of mining claims, were submitted to BLM for recordation and the filing fees therefor were not paid to BLM until after the deadline (90 days after the date of location) had passed, the mining claims must be deemed abandoned and void.

APPEARANCES: Virginia Edwards, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is from a decision dated January 14, 1980, by the Oregon State Office, Bureau of Land Management (BLM), declaring appellant's unpatented mining claims abandoned and void for failure to comply with the recordation requirements of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and regulations at 43 CFR 3833.

Appellant's Lee Mines #1 and #2 claims were located on August 13, 1979. She protested the fee requirement by letter of October 19, 1979. She submitted copies of the notices of location to BLM some time prior to November 1, 1979. On November 1, 1979, BLM dismissed her protest against the filing fee requirement subject to the right of appeal. No appeal was taken.

On December 10, 1979, she submitted a \$5 filing fee. The decision of January 14, 1980, rejected the filing and stated that \$10 in filing fees were required for two claims. It is from this decision the appeal was taken.

Appealing BLM's January 14 decision, appellant states that her location and her husband's work in construction caused delays in receipt of her mail. With her letter of appeal, appellant submitted on February 13, 1980, the required service fees of \$10 and the location notices.

Section 314 of FLPMA requires the owner of an unpatented lode or placer mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the BLM office designated by the Secretary of the Interior within 90 days after the date of the location. It also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

43 CFR 3833.1-2(b), provides as follows:

The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal

land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location \* \* \*.

43 CFR 3833.1-2(d) provides: "Each claim or site filed shall be accompanied by a one time \$5 service fee which is not returnable. A notice or certificate of location shall not be accepted if it is not accompanied by the service fee and shall be returned to the owner."

[1,2] In a recent decision, Joe B. Cashman, 43 IBLA 239 (1979), we construed that regulation in a manner which controls the disposition of the case at bar. We stated at 43 IBLA 240:

43 CFR 3833.1-2 requires that, for mining claims, millsites, or tunnel sites located prior to October 21, 1979, a copy of the location notice must be recorded with the proper office of BLM within 3 years, or before October 21, 1976, the location notice must be recorded in the proper BLM office within 90 days following date of location. 43 CFR 3833.1-2(d) states that each claim or site filed with BLM shall be accompanied by a \$5 service fee. This is a mandatory requirement. Without payment of the filing fee, there is no recordation. [Emphasis in original.]

It follows that the recordation date in the case at bar is the date the proper filing fees were paid, in this case well after the deadline for filing had passed. Under 43 CFR 3833.1-2 appellant's filing was not timely and the mining claims must conclusively be deemed abandoned and void, as required by FLPMA. 43 U.S.C. § 1744(c) (1976).

Under FLPMA and the regulations the requirements for filing are clear and mandatory. Walter T. Paul, 43 IBLA 119 (1979). The Board has repeatedly held that when a location notice of a mining claim, located after October 21, 1976, is not filed with BLM within 90 days from the date of location, it has no force and effect and must be returned to appellant. Faith C. Hartman, 44 IBLA 310 (1979); M. J. Reeves, 41 IBLA 92 (1979); William E. Rhodes, 38 IBLA 127 (1978); R. Wade Holder, 35 IBLA 169 (1978). The claim must be deemed conclusively to have been abandoned under the terms of the statute and is rendered void. 43 U.S.C. § 1744(c) (1976); Phillip M. Gardiner, 41 IBLA 391 (1979). The fact that appellant may have had delays in receiving her mail does not excuse her from compliance with the law.

Appellant may, however, relocate her claims if for locatable minerals, and file the notices required by 43 CFR 3833.1, subject to any intervening rights of third parties and assuming the land is still open to mineral location.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman  
Administrative Judge

I concur:

Anne Poindexter Lewis  
Administrative Judge

## ADMINISTRATIVE JUDGE THOMPSON CONCURRING IN THE RESULT:

I agree with the result in this case because under the clear facts shown in the record there is no basis for affording appellant any relief. Two notices of location (although improperly captioned) were received by the Bureau of Land Management State Office in Oregon on October 20, 1979. These filings were returned to appellant with that office's decision of November 1, 1979, denying her protest against payment of a \$5 recordation fee. This fee is required for each claim. Appellant sent no fee at all with the original tender of documents.

Appellant states she could not respond to the decision of November 1, 1979, within 30 days because mail is not received by her and her husband at regular intervals due to his work at another place. A \$5 filing fee for the two claims and the notices were retendered to BLM and received by it on December 10, 1979, as shown by the date stamp on the notices, and as stated in the BLM decision of January 14, 1980. By that decision the documents were returned to appellant because they were not received within 90 days after the date of location of the claims, which was August 13, 1979. The decision also pointed out that one \$5 service fee is inadequate to record two claims. In her appeal from this decision appellant retendered notices with a \$10 filing fee to cover the two claims. BLM issued a receipt for the fee indicating it was placed in a suspense account pending determination of the appeal.

Appellant did not appeal from the original refusal to record the claims. When she finally sent the notices with the required fee it was long after the 90 days from the date of the location of the claims. In these circumstances the requirements of the statute and the regulations were not met. The decision of BLM must be affirmed.

Joan B. Thompson  
Administrative Judge

